

LAW ENFORCEMENT

Legal Assistance

**Treaty Between the
UNITED STATES OF AMERICA
and the BAHAMAS**

Signed at Nassau
June 12 and August 18, 1987

with

Exchange of Correcting Notes



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“. . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

BAHAMAS

Law Enforcement: Legal Assistance

*Treaty signed at Nassau June 12 and August 18, 1987;
with exchange of correcting notes;
Transmitted by the President of the United States of America
to the Senate April 13, 1988 (Treaty Doc. 100-17,
100th Congress, 2d Session);
Reported favorably by the Senate Committee on Foreign Relations
July 25, 1989 (Senate Executive Report No. 101-12,
101st Congress, 1st Session);
Advice and consent to ratification by the Senate
October 24, 1989;
Ratified by the President January 2, 1990;
Ratified by the Bahamas July 18, 1990;
Ratifications exchanged at Washington July 18, 1990;
Entered into force July 18, 1990.*

TREATY
BETWEEN THE
UNITED STATES OF AMERICA
AND
THE COMMONWEALTH OF THE BAHAMAS
ON
MUTUAL ASSISTANCE IN CRIMINAL MATTERS

The Government of the United States of America and
The Government of The Commonwealth of The Bahamas,

Desiring to provide more effective co-operation
between the two States in the investigation, prosecution,
and suppression of serious crimes, such as
narcotics trafficking; and

Desiring to improve co-ordination and mutual assistance
in law enforcement matters in general;

Have agreed as follows:

Article 1

Obligation to Assist

1. The Contracting States agree, in accordance with the provisions of this Treaty, to provide mutual assistance in the investigation, prosecution and suppression of offences and in proceedings connected therewith, as defined in Article 2.

2. Assistance shall include:

- (a) taking the testimony or statements of persons;
- (b) providing documents, records, and articles of evidence;
- (c) executing requests for searches and seizures;
- (d) transferring persons in custody for testimonial purposes;
- (e) serving documents;
- (f) locating persons;
- (g) exchanging information in relation to the investigation, prosecution and suppression of offences;

- (h) immobilizing forfeitable assets; and
- (i) any other matter mutually agreed upon.

3. This Treaty is intended solely for mutual Legal Assistance between the criminal law enforcement authorities of the Contracting States and is not intended or designed to provide such assistance to private parties.

4. All requests under this Treaty shall be executed in accordance with and subject to the limitations imposed by the laws of the Requested State. The method of execution specified in the request shall be followed except to the extent prohibited by the laws of the Requested State.

Article 2

Definitions

1. For the purposes of this Treaty, the term "offence" means:

- (a) any conduct punishable as a crime under the laws of both the Requesting and Requested States; or
- (b) any conduct punishable as a crime under the laws of the Requesting State by one year's imprisonment or more, and which arises from, relates to, results from, or otherwise involves:
 - (i) illegal narcotics or drug activity as referred to in Article 36 of the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Amending Protocol to the Single Convention on Narcotic Drugs, 1961;
 - (ii) theft, including the obtaining of money or property by false pretences, representations, or promises and including the commission of embezzlement;
 - (iii) a crime of violence;
 - (iv) fraud or the use of fraud, including conduct which has the effect of defrauding the government, its agencies, or its citizens of the ability to conduct their affairs

free from fraud, false statements and deceit;

- (v) a violation of a law relating to currency or other financial transactions as an integral element contributing to the commission of any offence within the meaning of the foregoing provisions of this paragraph.

2. Offence for the purposes of this Treaty does not extend to any matter which relates directly or indirectly to the regulation, including the imposition, calculation and collection of taxes except any matter pertaining to monies shown to be derived from any activity within the provisions of paragraph 1 of the foregoing definition.

3. For the purposes of this Treaty, the term "proceeding" means the presentation of evidence to:

- (a) any court in a criminal trial in the Requesting State (including pre-trial motions);
- (b) any grand jury in the United States or any preliminary or commission of inquiry in The Bahamas;
- (c) any court or administrative agency in a hearing which could result in an order imposing forfeiture of fruits or instrumentalities of narcotics trafficking;
- (d) in the discretion of the Central Authority of the Requested State any court in a criminal or civil hearing which could result in an order imposing civil or criminal punishment, restitution to any victims of an offence, or the collection of fines imposed as a sentence in a criminal prosecution;
- (e) in the discretion of the Central Authority of the Requested State any administrative agency performing an adjudicatory function in the Requesting State in respect of the imposition of civil or administrative sanctions upon the offender ancillary to proceedings taken under (a), (b) or (d).

Article 3

Limitations on Compliance

1. The Central Authority of the Requested State may deny a request to the extent that:

- (a) execution of the request would prejudice the security or essential public interests of the Requested State;
- (b) the request relates to a political offence or to an offence under military law which would not be an offence under ordinary criminal law;
- (c) the evidence requested is to be used for the purpose of a trial of a person on a charge for which that person has been previously convicted or acquitted at a trial in the Requesting State, or was in jeopardy, under the laws of the Requesting State, of being convicted at that trial;
- (d) there are substantial grounds leading the Central Authority of the Requested State to believe that compliance would facilitate the prosecution or punishment of the person to whom the request refers on account of his race, religion, nationality or political opinions;
- (e) the request does not establish that there are reasonable grounds for believing:
 - (i) that the criminal offence specified in the request has been committed;
 - and
 - (ii) that the information sought relates to the offence and is located in the territory of the Requested State;
- (f) the request is not in conformity with the provisions of this Treaty.

2. Before denying any request pursuant to this Article, the Requested State shall determine whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

3. If execution of a request would interfere with ongoing proceedings in the Requested State, execution may be postponed by that State, or made subject to conditions determined necessary by that State after consultation with the Requesting State.

4. The Requested State shall promptly inform the Requesting State of the reason for denying or postponing the execution of a request.

Article 4

Central Authorities

1. A Central Authority shall be established by each Contracting State.

2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by him.

3. For The Bahamas, the Central Authority shall be the Attorney General or person designated by him.

4. Requests under this Treaty shall be made by the Central Authority of the Requesting State to the Central Authority of the Requested State.

Article 5

Contents of Requests for Mutual Assistance

1. Requests shall be submitted in writing where compulsory process is required in the Requested State or where otherwise required by the Requested State. In urgent circumstances, such requests may be made orally, but shall be confirmed in writing forthwith.

2. The request shall include the following:

- (a) the name of the agency or law enforcement authority conducting the proceeding to which the request relates;
- (b) the subject matter and nature of the proceeding for the purposes of which the request is made and in particular the criminal offences for the investigation, prosecution or suppression of which the assistance is requested and a summary of the facts which form the basis thereof;

- (c) a description of the evidence or information sought or the acts of assistance to be performed; such description shall specify where possible the time period to which any such evidence or information relates;
- (d) the purpose for which the evidence, information, or other assistance is sought; and
- (e) an indication of any time limit within which compliance with the request is desired, stating reasons.

3. To the extent necessary and possible, a request shall also include:

- (a) available information on the identity and whereabouts of a person to be located;
- (b) the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;
- (c) the identity and location of persons from whom evidence is sought;
- (d) a precise description of the place or person to be searched and of the objects to be seized;
- (e) a description of the type and amount of expenses which the Requesting State is willing to assume in the execution of the request; and
- (f) any other information which may be brought to the attention of the Requested State to allow it to execute the requests.

Article 6

Execution of the Request

1. The Central Authority of the Requested State shall promptly comply with the request or, when appropriate, shall transmit it to the authority having jurisdiction to do so. That authority shall use all legal means within its power to execute the request.

The courts of the Requested State shall have jurisdiction in accordance with its laws to issue subpoenas, search warrants, or other process necessary in the execution of the request.

2. When execution of the request requires judicial or administrative action, the request shall be presented to the appropriate authority by the persons designated by the Central Authority of the Requested State.

Article 7

Costs

1. The Requesting State shall assume all ordinary expenses required to present evidence from the Requested State in the Requesting State, including:

- (a) travel and incidental expenses of witnesses travelling to the Requesting State, including those of accompanying officials;
- (b) fees of experts; and
- (c) fees of counsel appointed with the approval of the Requesting State for a person giving testimony or for a defendant.

2. The Requested State shall assume all ordinary expenses of executing a request within its boundaries, except the following costs which shall be borne by the Requesting State:

- (a) fees of experts;
- (b) expenses of translation and transcription;
- (c) travel and incidental expenses of persons travelling to the Requested State to attend the execution of a request;
- (d) reasonable costs of locating, reproducing, and transporting to the Central Authority of the Requesting State documents or records specified in a request; and

- (e) costs of stenographic reports requested by the Central Authority of the Requesting State, other than reports prepared by a salaried government employee.

3. If during the execution of the request it becomes apparent that expenses of an extraordinary nature are required to fulfill the request, the Parties shall consult to determine the terms and conditions under which the execution of the request may continue.

4. The Parties shall agree, pursuant to Article 19, on practical measures as appropriate for the reporting and payment of costs in conformity with this Article.

5. A witness who appears in the territory of the Requesting State pursuant to Article 11 shall be entitled to the same fees and allowances ordinarily accorded to a witness in the territory of the Requesting State.

6. A witness who appears in the territory of the Requested State pursuant to Article 9 shall be entitled to such fees and allowances as shall be agreed between the Central Authorities.

Article 8

Limitations on Use

1. The Requesting State shall not use any information or evidence obtained under this Treaty, nor any information derived therefrom, for purposes other than those stated in the request without the prior consent of the Requested State.

2. Unless otherwise agreed by both Central Authorities, information or evidence furnished under this Treaty shall be kept confidential, except to the extent that the information or evidence is needed for investigations or proceedings forming part of the prosecution of a criminal offence described in the request.

3. If the request cannot be executed without breaching the required confidentiality, the Requested State shall so inform the Requesting State which shall then determine whether the request should nevertheless be executed.

4. Information or evidence made public in the Requesting State in a trial resulting from the proceedings described in the request may be used only for the following additional purposes:

- (a) where a trial results in conviction for any criminal offence within the

scope of this Treaty, for any purpose against the person(s) convicted;

- (b) whether or not a trial results in the conviction of any person, in the prosecution of any person for any criminal offence within the scope of this Treaty;
- and
- (c) in civil or administrative proceedings, only if and to the extent that such proceedings relate to:
 - (i) the recovery of the unlawful proceeds of a criminal offence within the scope of this Treaty from a person who has knowingly received them;
 - (ii) the collection of tax or enforcement of tax penalties resulting from the knowing receipt of the unlawful proceeds of an offence within the meaning of paragraph 1 of Article 2 of this Treaty; or
 - (iii) the recovery in rem of the unlawful proceeds or instrumentalities of an offence referred to in the preceding subparagraph (ii).

Article 9

Testimony in the Requested State

1. A person requested to testify or to produce documentary information or articles in the territory of the Requested State may be compelled to do so in accordance with the requirements of the law of the Requested State.

2. If the person testifying or required to produce documents in the Requested State asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, his testimony or the production of documents shall nonetheless be taken or made, as the case may be, and the claim made known to the Requesting State for resolution by the authorities of the Requesting State.

3. The Requested State shall furnish information in advance about the date and place of the taking of testimony of the witness.

4. The Requested State shall authorize the presence of such persons as specified in the request during the execution of the request and, subject to the laws of the Requested State, allow such to question the person whose testimony is sought.

5. Business records produced under this Article shall be authenticated by the person in charge of maintaining them through the use of a Form A appended to this Treaty, which shall be executed under oath. No further certification shall be required. Documents authenticated under this paragraph shall be admissible in evidence in proof of the truth of the matter set forth therein.

Article 10

Transferring Persons in Custody for Testimonial Purposes

1. A person in custody in the Requested State who is needed as a witness in connection with the execution of a request in the Requesting State shall be transported to that State if the person consents and if the Requested State has no reasonable basis to deny the request.

2. A person in the custody of the Requesting State whose presence in the territory of the Requested State is needed in connection with the execution of a request under this Treaty may be transported to the territory of the Requested State if the person and both States consent.

3. For the purpose of this Article:

- (a) the receiving State shall be responsible for the safety and health of the person transferred and have the authority and obligation to keep the person transferred in custody unless otherwise authorized by the sending State;
- (b) the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or otherwise agreed and in any event no later than the date upon which he would have been released from custody in the territory of the sending State;
- (c) the receiving State shall not require the sending State to initiate extradition proceedings; and

- (d) the person transferred shall receive credit for the service of the sentence imposed in the sending State for time served in the custody of the receiving State.

Article 11

Testimony in the Requesting State

When the appearance of a person who is in the territory of the Requested State is needed in the territory of the Requesting State for the purpose of execution of a request under this Treaty, the Central Authority of the Requesting State may request that the Central Authority of the other State invite the person to appear before the appropriate authority in the territory of the Requesting State. The person required shall be told the kind and amount of expenses which the Requesting State has indicated will be paid to him. The response of the person shall be communicated promptly to the Central Authority of the Requesting State. Such a person shall be under no compulsion to accept such an invitation.

Article 12

Safe Conduct

1. No person in the territory of the Requesting State to testify in pursuance of the execution of a request shall be subject to service of process or prosecution or suit or be detained or subjected to any restriction of personal liberty by reason of any acts which preceded his departure from the Requested State.

2. The safe conduct provided for in this Article shall cease if, ten days after the person appearing has been notified that his presence is no longer required, that person being free to leave, has not left the Requesting State; or, having left the Requesting State, has returned.

Article 13

Providing Records of Government Agencies

1. The Requested State shall provide copies of publicly available records of a government agency or of its judicial department.

2. The Requested State may provide copies of records or information in the possession of a government office or agency, but not publicly available, to the same extent

and under the same conditions as it would to its own law enforcement or judicial authorities. The Requested State may in its discretion deny the request entirely or in part.

3. Documents provided under this Article shall be attested by the official in charge of maintaining them through the use of Form B, appended to this Treaty. No further certification shall be required. Documents attested under this paragraph shall be admissible evidence in proof of the truth of the matters set forth therein.

Article 14

Assisting in Forfeiture Proceedings

1. If the Central Authority of one State becomes aware of fruits or instrumentalities of offences located in the other State which may be forfeitable or otherwise subject to seizure under the laws of that State related to serious offences such as narcotics trafficking, it may so inform the Central Authority of the other State. If that other State has jurisdiction in this regard, it shall present this information to its authorities for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country, and shall, through their Central Authority, report to the other State on the action taken.

2. The Contracting States shall assist each other to the extent permitted by their respective laws and this Treaty in proceedings relating to the forfeiture of the fruits or instrumentalities of offences, restitution to the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions.

Article 15

Search and Seizure

1. A request for the search, seizure and delivery of any article to the Requesting State shall be executed if it includes the information justifying such action under the laws of the Requested State.

2. Every official of the Requested State who has custody of seized articles shall certify, through the use of Form C appended to this Treaty, the continuity

of custody, the identity of the article, and the integrity of its condition. No further certification shall be required. The certificates shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

3. The Requested State shall not be obliged to provide any item seized to the Requesting State unless that State has agreed to such terms and conditions as may be required by the Requested State to protect third party interests in the item to be transferred.

Article 16

Location and Identity of Persons

1. The Requested State shall make best efforts to ascertain the location and identity of persons specified in a request and who are needed in connection with the investigation, prosecution or suppression of an offence in the Requesting State.

2. The Requested State shall communicate as soon as possible the results of its inquiries to the Requesting State.

Article 17

Serving Documents

1. The Requested State shall effect service of any document relating to or forming part of any request for assistance properly made under the provisions of this Treaty transmitted to it for this purpose by the Requesting State; provided that the Requested State shall not be obliged to serve any subpoena or other process requiring the attendance of any person before any authority or tribunal in the Requesting State.

2. Unless otherwise agreed, any request for the service of a document inviting the appearance of a person before an authority in the Requesting State shall be transmitted at least thirty days prior to the date of the scheduled appearance.

3. The Requested State shall return as proof of service a receipt signed by the person served or a declaration signed by the officer making service, specifying the form and date of service.

Article 18

Compatibility with Other Treaties and Internal Laws

1. Assistance and procedures provided by this Treaty shall not prevent either of the Contracting States from granting assistance to the other Party in accordance with the provisions of other international agreements to which it may be a party or in accordance with the provisions of its internal laws.

2. Subject to the terms of paragraph 1, a Party needing assistance as provided in Article 1 in the investigation, prosecution or suppression of an offence as defined in Article 2 shall request assistance pursuant to this Treaty.

3. No private party may invoke the provisions of this Treaty to exclude any evidence hereunder or to impede the execution of a request.

Article 19

Improvement of Assistance

1. The Parties agree to consult as appropriate to develop other specific agreements or arrangements, formal or informal, on mutual legal assistance.

2. The Parties may agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

Article 20

Ratification and Entry Into Force

1. This Treaty shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.

2. This Treaty shall enter into force upon the exchange of instruments of ratification.

Article 21

Denunciation

Either Party may terminate this Treaty by means of written notice to the other State. Termination shall take effect six months following the date of notification.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Treaty.

Done in duplicate at Nassau

the 12th day of June 1987

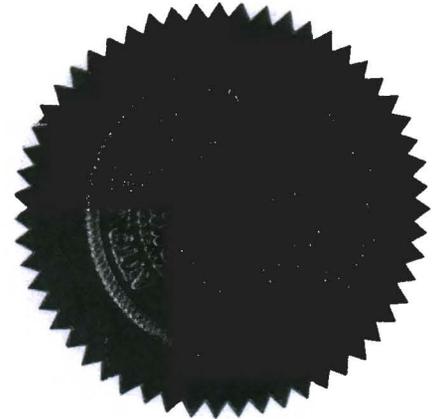
and the 18th day of August 1987.



For the Government of the
United States of America



For the Government of The
Commonwealth of The Bahamas



No. 053

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Commonwealth of The Bahamas and has the honor to refer to the Treaty between the United States of America and the Commonwealth of The Bahamas on mutual legal assistance in criminal matters signed at Nassau on the 12th day of June 1987 and the 18th day of August 1987 and to subsequent discussions between representatives of our two governments concerning the said Treaty. The Government of the United States proposes that the three legal forms described in the Mutual Legal Assistance Treaty be appended to the Treaty as exhibits thereto. The first legal form, Form A, is referenced in Article 9(5) of the Treaty; the second, Form B, is referenced in Article 13(3) of the Treaty; and the third, Form C, is referenced in Article 15(2). The texts of the forms are attached.

If these proposals conform to the understanding of the Government of the Commonwealth of The Bahamas, the Government of the United States proposes that this note, and the Ministry's note in reply confirming the corrections, shall constitute a correction of the text of the Treaty.

The Embassy of the United States of America wishes to take this opportunity to extend to the Ministry of Foreign Affairs of the Commonwealth of The Bahamas the renewed assurances of its highest consideration.

Embassy of the United States of America,

Nassau, January 27, 1988.

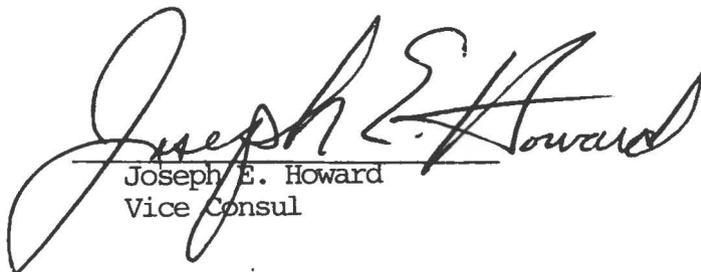
COMMONWEALTH OF THE BAHAMAS)
ISLAND OF NEW PROVIDENCE)
CITY OF NASSAU)
EMBASSY OF THE UNITED STATES)
OF AMERICA)

I, Joseph E. Howard, Vice Consul

of the United States of America at Nassau, N.P., Bahamas

duly commissioned and qualified, do hereby certify that
the foregoing copy is a true and faithful copy of the
original document, the same having been carefully
examined by me and compared with the said original
and found to agree therewith word for word and figure for
figure.

IN WITNESS WHEREOF I have hereunto set my hand and affixed
the seal of the American Embassy at Nassau, Bahamas, this
27th day of January, 19 88.



Joseph E. Howard
Vice Consul

Proposed Form A

CERTIFICATE OF AUTHENTICITY
OF
BUSINESS RECORDS

I, _____, attest on penalty of criminal
(Name)
punishment for false statement of false attestation that I am
employed by _____ and
(Name of Business from which documents are sought)
that my official title is _____. I
(Official Title)
further state that each of the records attached hereto is the
original or a duplicate of the original records in the custody
of _____. I
(Name of Business from which documents are sought)
further state that:

A) such records were made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

B) such records were kept in the course of a regularly conducted business activity;

C) the business activity made such records as a regular practice; and

D) if such record is not the original, such record is a duplicate of the original.

(Signature)

(Date)

PROPOSED FORM B

ATTESTATION OF AUTHENTICITY OF DOCUMENTS

I, _____, attest on penalty of criminal punishment for false statement or false attestation that my position with the Government of _____ is _____ and that in that position I am authorized by the law of _____ to attest that the documents attached hereto and described below are true copies of the original official records which are recorded and filed in _____ which is an office or agency of the Government of _____.

Description of Documents:

(Signature)

(Title)

(Date)

PROPOSED FORM C

ATTESTATION OF SEIZED ARTICLES

I, _____, certify that I am
(Name)

_____, employed in _____
(Official Title) (Name of

Government Office or Agency)

I received custody of the
article(s) listed below from _____ on
(Name of Person)

_____ at _____.
(Date) (Place)

I relinquished custody of the article(s) to _____
(Name of

_____ on _____ at
Person) (Date)

_____, at which time the articles
(Place)

were in the same condition as when I received them (or, if
different, as noted below).

Description of Articles:

Chances in Condition While in my Custody:

(Signature)

(Title)

(Date)



Ministry of Foreign Affairs
P.O. Box N-3746
NASSAU, Bahamas

4 February, 1988

No. 65

The Ministry of Foreign Affairs of the Commonwealth of The Bahamas presents its compliments to the Embassy of the United States of America and has the honour to refer to the Embassy's Note No. 053 dated January 27, 1988 in regards to the Mutual Legal Assistance Treaty in Criminal matters between the Government of the Commonwealth of The Bahamas and the Government of the United States of America.

The Ministry has the honour to inform the Embassy that the three forms proposed for the appendage to the Treaty are acceptable as they are in keeping with the substantive text of the Agreement.

The Ministry of Foreign Affairs of the Commonwealth of The Bahamas avails itself of this opportunity to renew to the Embassy of the United States of America, the assurances of its highest consideration.

Embassy of the United States
of America
Mosmar Building
Queen Street
NASSAU, Bahamas

